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Clerk
District Court

JUN 12 2006

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For The Northern Mariana Islands
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24 UNITED STATES DISTRICT COURT
25
26 NORTHERN MARIANA ISLANDS

27 DOES I, et al., On Behalf of Themselves and All) Case No. CV-01-0031
28 Others Similarly Situated,)
29 Plaintiffs,)
30 vs.)
31 THE GAP, INC., et al.,)
32 Defendants.)

33) CLASS ACTION
34) *GR 21*
35) ~~PROPOSED~~ ORDER RELATING TO
36) WITHHELD MFN FUNDS

37)
38) JUDGE: Alex R. Munson

1 THIS MATTER came before the Court on June 6, 2006 for a status conference held pursuant to the
2 Court's order dated March 29, 2006. Appearing in person were Timothy Bellas of the Garment Oversight
3 Board ("OB"), established pursuant to the Settlement Agreement in this action; Traylor T. Mercer of
4 Civille & Tang, and various other counsel representing defendants, none of whom actively participated at
5 the hearing. Appearing by telephone were Michael Rubin of Altshuler, Berzon, Nussbaum, Rubin &
6 Demain; Pamela M. Parker and Keith Park of Lerach Coughlin Stoia Geller Rudman & Robbins LLP; Joyce
7 C.H. Tang of Civille & Tang; and Lisa Poncia of Gilardi & Co., the court-appointed Claims Administrator.

8 In its March 29, 2006 order, the Court asked for an update from the parties and the OB on the
9 following matters:

- 10 1. the status of distributions to the Settlement Class Members;
- 11 2. an accounting of funds in the settlement trust account;
- 12 3. the status of any funds withheld pursuant to the Most Favored Nations provisions of the
13 Settlement Agreement;
- 14 4. the status of the Repatriation Fund established pursuant to the Settlement Agreement; and
- 15 5. plans for any residual funds left after distribution of the Settlement Funds.

16 **A. Background and Preliminary Comments**

17 Shortly after Levi Strauss & Co. was dismissed from this action in November 2003, certain
18 previously-settling retailers informally asserted a right to a refund of all their payments under the Most
19 Favored Nation provisions of the Settlement Agreement ("MFN provisions"). After these retailers made
20 initial contacts with plaintiffs' counsel regarding this claim, plaintiffs' counsel set aside a reserve consisting
21 of the claimed refund amount (the "withheld MFN funds"), pending resolution of the matter. The creation
22 of the reserve was confirmed by the Accounting provided to the Court by plaintiffs' counsel prior to the
23 status conference.

24 Thereafter, however, these retailers did not pursue the issue. Most recently, the OB's letter dated
25 December 23, 2005, which was served on all parties, specifically raised the issue of the withheld MFN
26 funds. This Court's March 29, 2006 order, which indicated that the withheld MFN funds would be a subject

1 of the status conference, also was served on all parties. Nevertheless, the previously-settling retailers have
2 not followed up on their claim and did not participate in the status conference.

3 It therefore appears that although the previously-settling retailers have had sufficient time and
4 opportunity to pursue their asserted claim to the withheld MFN funds, they have chosen not to do so.
5 Furthermore, it is the Court's view that the retailers' stated basis for asserting the claim – that Levi Strauss's
6 dismissal constitutes a "settlement" within the meaning of the MFN provisions – seems doubtful. A
7 definitive resolution of the matter is now necessary, both to ensure that distribution of settlement funds to
8 the Settlement Class Members is not unnecessarily delayed, and to resolve uncertainty regarding the monies
9 available to fund the OB's efforts.

10 **B. Disposition of Withheld MFN Funds**

11 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

12 1. The withheld MFN funds intended for distribution to Settlement Class Members shall
13 be immediately restored to the Settlement Distribution Fund.

14 2. The withheld MFN funds that had been designated for payment into the Repatriation
15 Fund maintained and disbursed by the OB shall be restored to that Fund. Within 15 days of the entry of this
16 order, plaintiffs' counsel shall deliver to the OB, by check or wire transfer, that portion of the withheld MFN
17 monies designated for the Repatriation Fund.

18 3. The withheld MFN funds that have been designated for funding of the OB's
19 operations shall be delivered by check or wire transfer to the OB within 15 days of the entry of this order.

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1 4. All remaining withheld MFN funds shall be restored and hereafter used for the
2 purposes originally intended by the Settlement Agreement (including, without limitation, Administrative
3 Costs).

* * *

ORDER

IT IS SO ORDERED.

DATED: June 9, 2006

**THE HONORABLE ALEX R. MUNSON
CHIEF JUDGE**

Submitted by:

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